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WP.No.1789 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2024

CORAM

THE HONOURABLE Mr.JUSTICE C.KUMARAPPAN

**WP.No.1789 of 2012**

S.Sugumar

... Petitioner

Vs.

1. The Director General of Police,  
Central Reserve Police Force,  
CGO Complex,  
Lodhi Road,  
New Delhi-110 003.
2. The Deputy Inspector General of Police,  
Central Reserve Police Force,  
Group Centre, Avadi,  
Chennai-600 065.
3. The Commandant,  
Central Reserve Police Force,  
18<sup>th</sup> Battalion,  
Kulgam, Jammu & Kashmir C/o.56.

... Respondents

**Prayer:** Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order No.P.VIII.10/2011-18-EC.II dated 17<sup>th</sup> October 2011 passed by the 3<sup>rd</sup> respondent and quash the same and to direct the respondents to take the petitioner into the strength of Central Reserve Police Force as Constable with all monetary benefits.

For Petitioner : Mr.A.S.Munibur Rahman



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For Respondents : Mr.V.Chandrasekaran,  
SPC for R1 to R3

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## **ORDER**

The instant writ petition has been filed seeking an order of Certiorarified Mandamus, calling for the records relating to the impugned order No.P.VIII.10/2011-18-EC.II dated 17<sup>th</sup> October 2011 passed by the 3<sup>rd</sup> respondent and quash the same.

2. The brief facts which give rise to the instant writ petition is that, the petitioner joined in the Central Reserve Police Force as Constable on 28.08.2001. After having completed his training, he was posted at 18 Battalion and served in Megalaya and Srinagar. It appears that while he was serving in Jammu Kashmir, he received a telephonic message that his father was admitted as inpatient in the Christian Medical College Hospital. Hence, he was granted leave from 10.02.2011 to 10.04.2011. Whereas, considering the ailment of his father, he was compelled to stay along with him, even after the leave period. Hence, he was not able to rejoin the duty on 11.04.2011. In pursuance thereof, he was served with a charge memo for overstay and also for not respecting the order of rejoining. Therefore, the respondent has issued a show cause notice



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and also initiated a disciplinary proceedings. After enquiry, ultimately found that the charge against the petitioner was proved. Thereafter, second show cause notice was issued to the petitioner. Even for the 2<sup>nd</sup> show cause notice, the petitioner did not give his explanation. Therefore, the respondents passed the impugned order on 17.10.2011 and imposed the penalty of removal from service with effect from 17.10.2011. The said order is under challenge in this writ petition.

3. The learned counsel for the petitioner would vehemently contend that the petitioner is a sincere police man and that for more than 10 years, he has put in unblemished service, and that he was compelled to overstay because of his father's ailment. It is the further submission of the learned counsel for the petitioner that, taking advantage of his predicament position of not able to attend the enquiry proceedings, the respondent has conducted the enquiry in an exparte manner and has ultimately found him guilty. The learned counsel would further submit that the petitioner has sent an application to extend his leave and such application has not been considered. It was also the contention of the learned counsel for the petitioner that since the enquiry being exparte in nature, and that the petitioner was not provided with reasonable opportunity to defend his case, the learned counsel for the petitioner prayed to interfere with



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the order of dismissal, by allowing this writ petition.

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4. Per contra, the learned counsel for the respondents would submit that, though the petitioner was granted leave only upto 10.04.2011, he was unauthorisedly absent from 11.04.2011. Therefore, he was issued with a charge memorandum. The learned counsel would further submit that the alleged extension of leave application has reached the respondents only after the completion of the enquiry proceedings. The learned counsel also submitted that though the respondent has sent the enquiry report to the petitioner, he did not submit any reply to the same. It is also contended that this is not the first occasion where the petitioner was overstayed and even prior to this, the petitioner has overstayed six times. Therefore, contended that the petitioner is a habitual delinquent and that the petitioner, being a member of the uniformed service, is expected to be with more discipline. If such delinquent person is reinstated, it would set a wrong precedent. Hence, prayed to dismiss the writ petition.

5. I have given my anxious consideration to either side submissions.

6. The sum and substance of the instant writ petition is challenge against



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the order of punishment. The ground of challenge is that the enquiry was conducted in an exparte manner and that the his application for extension of time was not considered. It is pertinent to mention here that the petitioner was granted permission to stay only upto 10.04.2011. Whereas, the petitioner did not rejoin the duty after completion of leave. Apart from that, he also did not respect even the direction given by the respondent to rejoin the duty. The reason assigned by the petitioner is his father's ailment.

7. Whereas, the learned counsel for the respondent submits that the petitioner is a habitual delinquent and even prior to this delinquency, almost six times the petitioner has overstayed, therefore, contended that the reason assigned by the petitioner is devoid of merits.

8. It is not in dispute that the petitioner was served with a notice for domestic enquiry. In pursuance of such notice, the enquiry proceedings was commenced. Therefore, it is the duty of the delinquent to attend the enquiry. To further fan the flame, though the petitioner was served with the final enquiry report calling upon his explanation by way of a 2<sup>nd</sup> show cause notice, the petitioner did not thought fit to respond. Therefore, this Court is of the firm view that the ground of exparte enquiry cannot be a ground for the



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petitioner at this length of time, as he did not even send his reply to the 2<sup>nd</sup> show cause notice.

9. It is pertinent to mention here that while exercising the power of judicial review under Article 226 of the Constitution of India, this Court has got only a limited jurisdiction. In this regard, this Court would like to refer the few precedents so as to understand the concept of the judicial review, with lucidity.

10. In *B.C.Chaturvedi Vs. Union of India* reported in (1995) 6 SCC 749, the Hon'ble Supreme Court has held as follows. The relevant paragraphs are paragraphs 12 & 18 and the same read as follows:-

*“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has*



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*jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. **The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.***

13. ....

14. ....

15. ....

16. ....

17. ....

*18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the*



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*magnitude or gravity of the misconduct. **The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.***

*(Emphasis supplied by this Court)*

11. In ***Deputy General Manager (Appellate Authority) Vs. Ajai Kumar Srivastava*** reported in ***(2021) 2 SCC 612***, the Hon'ble Supreme Court held that if the decision is against the natural justice, then the same can be interfered. The relevant paragraphs are paragraphs 25 & 29 and the same read as follows:-

*“25. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the Rules of natural justice or in violation of the statutory Rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record*



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*or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.*

26. ....

27. ....

28. ....

*29. The Constitutional Court while exercising its jurisdiction of judicial review Under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”*

Through the above judgments, the following principles are emerging:-

(i) Power of Judicial review is not like an appeal. But such power is meant to ensure that the individual receives fair treatment and to ensure the compliance of natural justice.

(ii) The power of judicial review is not like a appellate remedy to substitute its own finding, unless the findings of the Disciplinary Authority and Appellate Authority is perverse and without evidence.

(iii) The High Court had no jurisdiction to review the penalty, unless it is shockingly disproportionate.

(iv) Since because there is a possibility to arrive at yet another finding, cannot be a reason to substitute the finding of the disciplinary Authority.



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(v) The judicial review is meant only to ensure fairness

in treatment and not to ensure fairness of conclusion.

(vi) While exercising the power of judicial review, so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.

12. Therefore, in view of the above principles, when due procedure has been followed by the respondents in conducting the enquiry, and when the notice was served to the petitioner, the non participation cannot be taken advantage by the petitioner. Besides, there are no *bona fide* ground put forth for his absence before the respondent authority during enquiry. Besides, as rightly contended by the learned counsel for the respondents, this is not the first time that the petitioner is overstaying. Therefore, cumulatively for all these reasons, this Court could not find any ground to interfere in the order of the respondent.

13. In the result, this writ petition is dismissed. No costs.

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Index : Yes /No

Speaking order : Yes/No



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**C.KUMARAPPAN, J.**

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